

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOY M. MAHONEY,

Plaintiff,

Civil No. 09-6163-AA
OPINION AND ORDER

vs.

THERESA SCHMID, EXECUTIVE DIRECTOR
OREGON STATE BAR ASSOCIATION; GERRY
GAYDOS; S. WARD GREENE; ROBERT L
VIERA; THERESA L WRIGHT; AUDREY T
MATSUMONJI; STEPHEN V PIUCCI; MITZI
M NAUCLER; MICHELLE CASTANO GARCIA;
BARBARA M DILACONI; STEVE B LARSON;
KATHLEEN A EVANS; KELLI F JOHNSON;
ANN L FISHER; GINA ANNE JOHNNIE;
KAREN J LORD; CHRISTOPHER H KENT,
MEMBERS BOARD OF GOVERNORS, OREGON
STATE BAR ASSOCIATION,

Defendants.

Joy M. Mahoney
24386 Bunker Hill Rd.
Monroe, Oregon 97456
Plaintiff appearing Pro Se

Helen M. Hierschbiel
Attorney At Law
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97034
Attorney for Defendants

AIKEN, Judge:

Plaintiff, Joy M. Mahoney ("Mahoney"), filed a complaint, pro se, pursuant to the Americans With Disability Act alleging (1) Oregon State Bar Bylaw Article 20 Section 20.1(B) is over broad and vague; (2) plaintiff's rights have been violated due to defendant's application of OSB Bylaw 20.1(B) because it violated her right to private association under the First Amendment; and (3) defendants violated plaintiff's right to accommodation of her disability under Title II of the Americans With Disabilities Act. Defendants filed a motion to dismiss alleging plaintiff lacks standing to sue, and that plaintiff fails to prove any set of facts that would entitle her to relief. Alternatively, defendants argue that this court should abstain from exercising jurisdiction over this case. Defendants' motion to dismiss is granted. This court lacks subject matter jurisdiction over plaintiff's claims due to plaintiff's lack of standing. The court declines to rule on defendants' alternative motion.

BACKGROUND

Although the plaintiff in the suit at bar is Joy Mahoney, the Complaint was drafted by Jeffrey Sharp. Sharp is not a licensed attorney. In December 2008, the Oregon State Bar ("the

Bar") filed suit against Sharp alleging that he has been practicing law without a license, and sought to enjoin him from continuing his unauthorized practice of law. Plaintiff was one of Sharp's "clients," seeking his legal advice and assistance to respond to a 24-hour notice of termination of tenancy and subsequent eviction proceeding. In the Bar's suit for injunctive relief, it contends that Sharp unlawfully provided legal advice and assistance to plaintiff and three other individuals.

Mr. Sharp, in drafting plaintiff's Complaint, explains that plaintiff is a "legally mentally disabled woman as the result of a head injury." Complaint, p. 2. He explains that plaintiff has lived in low income housing for the past several years, and that she attempted to obtain counsel through legal aid or other "pro bono" means; however, those attempts were unsuccessful. Id. Plaintiff was allegedly evicted by her landlord upon a 24-hour notification. Plaintiff then "requested private, unpaid and informal lay legal assistance from a personal friend, one Jeffrey Sharp" due to plaintiff's failure to obtain counsel elsewhere. Id.

Plaintiff's complaint states, "Mr. Sharp is assisting plaintiff with this complaint despite the Bar's harassment of him, but under the Oregon Bar's position the unpaid legal assistance of Mr. Sharp or one like him will no longer be available and plaintiff will no longer have effective access to

the courts." Id. at p. 4.

The Complaint notes:

As the result of Mr. Sharp's unpaid legal assistance Plaintiff was able to resolve the 24 hour eviction on terms favorable to her and substantially prevailed on the separate illegal eviction claim, this against a corporate attorney hired by the landlord. Without Mr. Sharp's help, Plaintiff would have had no effective access to the court at all and would have been legally helpless.

Id. at p. 3.

Further, the Complaint alleges that, "the judge (Locke Williams) in the 24 hour eviction claim very much resented this form of access to the court and filed a complaint with the Oregon State Bar against Mr. Sharp for the "unlawful practice of law" solely based on his assistance with plaintiff's pleadings." Id. Moreover, Mr. Sharp alleges that he has been intimidated and harassed by the Bar due to the assistance he provided. Finally, plaintiff argues:

the threat of an injunction has interfered with Mr. Sharp's willingness and ability to further assist me with my landlord tenant/disability based legal problems. As such, the Oregon Bar's intimidation and harassment of Mr. Sharp is affecting my federal rights of effective access to the courts and the right to accommodation for my disability.

Id. at p. 3-4.

Plaintiff appears to base her claims on the application of OSB Bylaw section 20.1(B) which defines the unlawful practice of law to include "providing advice or service to another on any

matter involving the application of legal principles to rights, duties, obligations or liabilities."

STANDARD OF REVIEW

STANDARDS

Under Fed. R. Civ. P. 12(b)(6), once a claim has been stated adequately, it may be supported by "showing any set of facts consistent with the allegations in the complaint." Bell Atlantic Corp. v. Twombly, ___ U.S. ___, 127 S.Ct. 1555, 1560 (2007). See also, Litchfield v. Spielberg, 736 F.2d 1352, 1357 (9th Cir. 1984), cert. denied, 470 U.S. 1052 (1985). For the purpose of the motion to dismiss, the complaint is liberally construed in favor of the plaintiffs, and its allegations are taken as true. Rosen v. Walters, 719 F.2d 1422, 1424 (9th Cir. 1983).

DISCUSSION

Standing

Article III of the United States Constitution limits federal court jurisdiction to "cases or controversies." In order for plaintiff to have standing to sue, she must have been actually injured by defendant's conduct. Friends of the Earth v. Laidlaw Environmental Servs., 528 U.S. 167, 180 (2000). In order to have standing: (1) the plaintiff must have suffered an "injury in fact;" (2) the injury is "fairly traceable" to defendant's actions; and (3) the injury will likely be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S.

555, 560-61 (1992).

Here, plaintiff suffers no direct injury as a result of any injunctive proceedings brought by the Oregon State Bar against Mr. Sharp. Further, any harm alleged by plaintiff is not likely to be redressed by the relief she requests. Plaintiff maintains that the Bar's suit against Mr. Sharp has interfered with Sharp's willingness to continue to provide legal assistance to plaintiff on her landlord-tenant matters, notwithstanding Sharp's apparent willingness to assist her with this lawsuit. Plaintiff alleges that without Sharp's assistance, she would have had no effective access to the courts. Consequently, she alleges that the Bar's suit against Sharp is denying her right to effective access to the courts and her rights to accommodation for her disability. Plaintiff, however, fails to indicate how or why any of the defendants are responsible for ensuring her access to the courts and accommodation for her disability, or how exactly they are involved in denying her rights. Here, the only person who stands to suffer direct injury in any proceeding by the Bar is Sharp. Any injury to plaintiff due to the Bar's actions concerning Sharp is indirect at best. Even if this court were to grant plaintiff the relief she seeks, she is not then guaranteed access to the courts or accommodation for her disability. In fact, plaintiff's prayer for relief does not demand that she be ensured either access to the courts or accommodation for her disability; instead

she demands that the Bar stop interfering with Sharp's activities.

Therefore, plaintiff lacks standing to pursue this litigation in federal court against defendants. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) ("a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another" and "lacks standing to contest the policies of the prosecuting authority when he himself is nether prosecuted nor threatened with prosecution.").

CONCLUSION

Defendants' motion to dismiss (doc. 22) is granted. This case is dismissed and all pending motions are denied as moot. IT IS SO ORDERED.

Dated this 8 day of December 2009.

/s/ Ann Aiken
Ann Aiken
United States District Judge